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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

ANSELMO A. CHAVEZ, Plaintiff and Appellant, v. DAVID E. COX, Defendant and Respondent.	C061170 (Super. Ct. No. 34200880000123CUWMGDS)

Anselmo A. Chavez brings this pro se appeal from the dismissal of his superior court challenge to the election of his opponent, David E. Cox, to the office of state senator. Chavez contends Cox is ineligible to serve and should be removed from office--and we should order Chavez appointed in his place--because Cox "falsely" used a nickname, "Dave," in place of his true name on his declaration of candidacy and his oath of office.

We find the trial court properly concluded the State Senate, not the courts, has jurisdiction to determine the

qualifications of its members. (Cal. Const., art. IV, § 5; see *California War Veterans for Justice v. Hayden* (1986) 176 Cal.App.3d 982, 986.) We shall affirm the judgment dismissing the contest.

BACKGROUND

Chavez and Cox were contenders for the office of State Senator, District #1, in the general election held November 4, 2008.[1] Cox, the Republican candidate, was elected with 62.3 percent of the vote.

Chavez filed an election contest in superior court. (A copy of that filing is not in the record; for a description of its contents, we rely upon the trial court's order following the hearing on the merits.) Chavez challenged Cox's election on the ground Cox's declaration of candidacy was improperly completed, in that it "was written in, and signed, as 'Dave Cox.'" Chavez

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[1] Cox has asked that we take judicial notice of two items: (1) a portion of the Statement of Vote issued by California Secretary of State Debra Bowen for the November 4, 2008, General Election, and (2) an opinion of the Attorney General (15 Ops. Cal. Atty. Gen. 281 (1950) [concluding that "[a] candidate may have his name appear with his nickname, provided that he has declared his candidacy or been nominated under such name"].) (*Id.* at p. 282.)

The first request, we grant. (*Edelstein v. City and County of San Francisco* (2002) 29 Cal.4th 164, 171, fn. 3 [taking judicial notice of election results].) In response to the second request, we take judicial notice of the issuance of such opinions, but not their substance. (*Taxpayers for Improving Public Safety v. Schwarzenegger* (2009) 172 Cal.App.4th 749, 771-772.) Nevertheless, we need not take judicial notice of the Attorney General opinions in order to consider them for whatever value they may have in assessing the legal issues raised in this matter. (*Id.* at p. 772.)

alleged that "Dave Cox" is an assumed name, that it is a false name, and that its use by Cox constituted perjury, within the meaning of Penal Code section 118. Chavez also purported to invoke Elections Code section 18203, which provides, in part, that "Any person who files or submits for filing a . . . declaration of candidacy knowing that it or any part of it has been made falsely is punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in the state prison for 16 months or two or three years or by both the fine and imprisonment."

Chavez asserted his contest is authorized by Elections Code section 16100, which states that "[a]ny elector of a county, city, or of any political subdivision of either may contest any election held therein, for any of the following causes: [¶] . . . [¶] (b) That the person who has been declared elected to an office was not, at the time of the election, eligible to that office. . . ."

Following a hearing on the merits (of which there is no transcript in the record on appeal), the trial court dismissed the election contest, and entered judgment in Cox's favor.

Its decision shows the court accepted Cox's argument that it lacked jurisdiction to consider the election challenge aimed at Cox's qualifications, because the California Constitution, article IV, section 5 states that, "Each house shall judge the qualifications and elections of its Members . . . ."

The court went on to reject Chavez's challenge on its merits, finding that he failed to show any irregularity in Cox's

completion of his declaration of candidacy, on which Cox both stated his name as "'David E. Cox'" and stated he wanted his "name . . . to appear on the ballot as . . . 'Dave Cox'" in compliance with Elections Code section 8040.[2] The court also found Chavez failed to sufficiently allege or show that Cox intended to mislead voters or elections officials.

DISCUSSION

I. Standards of Review

Because Chavez's appellate brief displays a lack of familiarity with applicable procedural rules, it is helpful to set forth some of the rules prior to addressing his contentions on appeal.

A judgment or order of the trial court is presumed to be correct, and all intendments and presumptions are indulged to support it on matters as to which the record is silent. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *In re Marriage of Gray* (2002) 103 Cal.App.4th 974, 977-978.) Thus, an appellant

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[2] Elections Code section 8040 governs the form of declarations of candidacy, and states: "(a) The declaration of candidacy by a candidate shall be substantially as follows:

"DECLARATION OF CANDIDACY [the declaration is not provided in the text; there is a link to the declaration itself]

"(b) A candidate for a judicial office may not be required to state his or her residential address on the declaration of candidacy. However, in cases where the candidate does not state his or her residential address on the declaration of candidacy, the elections official shall verify whether his or her address is within the appropriate political subdivision and add the notation 'verified' where appropriate."

has the burden to affirmatively demonstrate reversible error. (*Denham v. Superior Court*, *supra*, at p. 564; *In re Marriage of Gray*, *supra*, at pp. 977-978.)

The appellant's burden includes (1) presenting each point separately in the opening brief under an appropriate heading, showing the nature of the question to be presented and the point to be made; (2) providing an adequate record that affirmatively demonstrates error; (3) supporting all appellate arguments with legal analysis and appropriate citations to the material facts in the record; and (4) showing exactly how the error caused a miscarriage of justice. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295; *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239-1240; *In re Marriage of McLaughlin* (2000) 82 Cal.App.4th 327, 337.) If the appellant fails to comply with any of these rules, the contentions are forfeited. (*Maria P. v. Riles*, *supra*, at p. 1295; *City of Lincoln v. Barringer*, *supra*, at pp. 1239-1240; *In re Marriage of McLaughlin*, *supra*, at p. 337.)

Lack of legal counsel does not entitle an appellant to special treatment (*Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 795; *Harding v. Collazo* (1986) 177 Cal.App.3d 1044, 1055; *Doran v. Dreyer* (1956) 143 Cal.App.2d 289, 290); a pro se litigant is held to the same restrictive rules of procedure as an attorney. (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639.) "A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to

litigation." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985.)

II. Chavez has Failed to Show Reversible Error

Chavez takes issue with the trial court's decision because it "did not address, or take applicable consideration, [*sic*] [of] the fact that the Respondent printed his name as Dave Cox, and signed off the Declaration, and the Oath of Office, with his nickname, Dave Cox."

Cox responds that the trial court correctly determined that the state Senate is the sole judge of the "qualifications and elections" of its members and, in any event, Chavez's action must fail because Cox properly completed his declaration of candidacy.

Because we agree with Cox's first argument, we need not consider his second.

Under the California Constitution, as under the federal Constitution and the law of most states, the Legislature has sole jurisdiction to determine the qualifications of its members and the sole right to expel them from membership. (*In re McGee* (1951) 36 Cal.2d 592, 594; *California War Veterans for Justice v. Hayden, supra,* 176 Cal.App.3d at p. 986.) Article IV, section 5 of the California Constitution provides in pertinent part: "Each house shall judge the qualifications and elections of its Members and, by rollcall vote entered in the journal, two thirds of the membership concurring, may expel a Member." Article IV, section 5 was adopted on November 8, 1966. Its predecessor statutes, however, contained substantially the same

provision. (See *Allen v. Lelande* (1912) 164 Cal. 56, 57; *In re McGee, supra*, 36 Cal.2d at p. 594.)

"For over 100 years the California Supreme Court has consistently held that under the Constitution the courts have no jurisdiction to inquire into the qualifications of the members of the Legislature." (*California War Veterans for Justice v. Hayden*, *supra*, 176 Cal.App.3d at p. 986; citing *People v. Metzker* (1874) 47 Cal. 524, 525-526.)

For example, in *Allen v. Lelande, supra,* 164 Cal. 56, the California Supreme Court denied a petition for a writ of mandate which sought to order a county clerk to strike the name of a candidate for the state Assembly from the ballot because of alleged nonresidency. In so doing, the court relied upon article IV, section 7 of the California Constitution (predecessor to current Cal. Const., art. IV, § 5): "'Each house shall choose its officers, and judge of the qualifications, elections, and returns of its members.' By that article the assembly is made the exclusive judge of the qualifications of its members. The law providing for an official ballot cannot be held to have changed the intent of the people in adopting that constitutional provision that the assembly should be the sole and exclusive judge of the eligibility of those whose election is properly certified. For this court to undertake to try the question of eligibility and to deprive the candidate of any chance to be elected, would simply be to usurp the jurisdiction of the assembly." (*Allen v.*

Lelande, supra, 164 Cal. at p. 57; see *In re McGee, supra,* 36 Cal.2d 592, 594.)

Similarly, in *In re McGee, supra*, 36 Cal.2d 592, the Supreme Court also declined to find that the judiciary has jurisdiction to determine the qualifications of members of the legislative branch. In *McGee*, the defendant sought the office of state Assemblyman. He won the nominations for both Republican and Democratic tickets in the June 1950 primary. Plaintiff, the unsuccessful opponent, contested the election under former Elections Code section 8600, which stated that any candidate at a primary election may contest the right of another candidate to nomination to the same office by filing in the superior court an affidavit alleging various grounds including ineligibility to the office in dispute. (*Id.* at p. 593.)

The Supreme Court in *McGee* agreed that former article IV, section 7 of the California Constitution ["Each house (of the Legislature) shall . . . judge . . . the qualifications, elections and returns of its members"] "confers exclusive jurisdiction on the Legislature to judge the qualifications and elections of its members." (36 Cal.2d at p. 594; see also *Jones v. McCollister* (1958) 159 Cal.App.2d 708, 712 ["the Assembly is the sole and exclusive judge of the 'qualifications, elections, and returns of its members'"].)[3]

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[3] The California Supreme Court in *In re McGee, supra*, 36 Cal.2d 592, also noted that "[the] overwhelming weight of authority under identical federal and state constitutional provisions is in accord." (*Id.* at p. 595.) The parallel provision of the United States Constitution is article I, section 5, which

In conformity with these authorities, the trial court determined it had no jurisdiction to consider Chavez's election contest to Cox's qualifications. On appeal, Chavez has made no attempt to show the trial court was mistaken on this point. He has thus forfeited his right to claim the court erred in dismissing the contest on this ground.[4]

Moreover, we conclude, for the reasons set forth above, that the trial court correctly concluded that the Legislature, not the courts, have jurisdiction under the California Constitution to inquire into the qualifications of its members. (*Stermer v. Board of Dental Examiners* (2002) 95 Cal.App.4th 128,

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provides in pertinent part: "Each House shall be the Judge of the elections, returns, and qualifications of its own Members . . . ." (See *Reed v. County Commissioners* (1928) 277 U.S. 376, 388 [72 L.Ed. 924, 926] [Under Article I, section 5, the Senate "is the judge of the elections, returns and qualifications of its members . . . . It is fully empowered, and may determine such matters without the aid of the House of Representatives or the Executive or Judicial Department"].)

[4] Accordingly, we do not address defendant's initial reliance upon Elections Code section 16100 as providing statutory authorization for his election contest. That section confers no authority for the judicial determination of legislative members' qualifications which would undermine the constitutional limitation. Moreover, Chavez has identified no instance in which Elections Code section 16100 has been applied to an election contest involving a member of the Legislature, and our research has uncovered none. Rather, it has been cited as the basis for challenges (for example) to the election of mayoral or city council candidates (*Bradley v. Perrodin* (2003) 106 Cal.App.4th 1153, *Stebbins v. White* (1987) 190 Cal.App.3d 769, *Hale v. Farrell* (1981) 115 Cal.App.3d 164); a county sheriff (*Doran v. Biscailuz* (1954) 128 Cal.App.2d 55); a judge (*Bush v. Head* (1908) 154 Cal. 277); and members of the Republican Central Committee (*Cummings v. Stanley* (2009) 177 Cal.App.4th 493).

132–133 [questions of law are subject to a de novo standard of review].) Accordingly, we shall affirm the judgment.

DISPOSITION

The judgment is affirmed.

CANTIL-SAKAUYE, J.

We concur:

HULL, Acting P. J.

BUTZ, J.